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Contract Number

25-527

SAP Number

BLOOMINGTON RECREATION AND PARK DISTRICT

Department Contract Representative	<u>Chuck Hernandez</u>
Telephone Number	<u>(909) 386-8832</u>
Consultant	<u>Garner Holt Productions, Inc</u>
Consultant Representative	<u>Bill Butler</u>
Telephone Number	<u>(909) 799-3030</u>
Contract Term	<u>June 18, 2025 – June 18, 2026</u>
Original Contract Amount	<u>\$249,400</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>\$249,400</u>
Cost Center	<u>6250003166</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County, Department of Public Works – Special Districts (Department), on behalf of Bloomington Recreation and Park District (hereinafter referred to as “District”) desires to utilize the services of a consultant to provide artistic design, fabrication, placement, and anchoring services of two original statues at Kessler Park; and

WHEREAS, the Department conducted a competitive process under (RFP No. SPD125-SPDAD-5861) pursuant to which Garner Holt Productions, Inc. (Consultant), submitted a proposal to provide these services; and

WHEREAS, the District finds Consultant qualified to provide artistic design, fabrication, placement, and anchoring services of two original statues at Kessler Park; and

WHEREAS, the District desires that such services be provided by Consultant and Consultant agrees to perform these services as set forth below;

NOW, THEREFORE, the District and Consultant mutually agree to the following terms and conditions:

A. DEFINITIONS

- A.1 Board** – The San Bernardino Board of Supervisors or Directors of Directors.
- A.2 Contract** – The Contract between the District and the Proposer resulting from the award issued pursuant to the Request for Proposal to the successful Proposer.
- A.3 Consultant** – Any individual, company, firm, corporation, partnership, or other organization to whom a contract award is made by the District.
- A.4 County** – San Bernardino County and its authorized representatives.
- A.5 Department** – The San Bernardino County Department of Public Works – Special Districts, the department that administers and manages the operations and financing of all San Bernardino County Board Governed Special Districts.
- A.6 District** – The political subdivisions of San Bernardino County governed by the Board of Supervisors or Board of Directors and is administered by the Department of Public Works – Special Districts which collectively include the San Bernardino County Service Areas and their Zones, Big Bear Valley Recreation and Park District, and Bloomington Recreation and Park District.
- A.7 Subconsultant** – An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Consultant who is performing services on behalf of Consultant under the Contract or under a separate contract with or on behalf of Consultant.

B. CONSULTANT RESPONSIBILITIES

The services to be rendered by the Consultant shall consist of all such services as detailed within the Request for Proposal (RFP), Scope of Work, incorporated herein by this reference, but not limited to the following:

- B.1** Consultant shall provide supervision, labor, equipment, materials, and transportation necessary to complete the project.
- B.2** Consultant shall include three-dimensional (3D) imaging of selected individuals to be used as the models for the original artistic design and fabrication of the two statues for Kessler Park.
- B.3** Consultant shall provide the artistic design, fabrication, placement, and anchoring services of two original statues at Kessler Park.
- B.4** While the vast majority of the work consisting of the artistic design, development, creative components, and fabrication are to be completed off-site, some minor, incidental, placement and anchoring of the original statues will be required and which includes, but is not limited to, the placement of an 18-inch pedestal with footings and anchoring to be provided for District's acceptance.
- B.5** Consultant and employees shall always display a professional and courteous attitude towards the public within the park in which work is being performed. Consultant shall not take directions from the public within the park.

C. GENERAL CONTRACT REQUIREMENTS

- C.1 Recitals**
The recitals set forth above are true and correct and incorporated herein by this reference.
- C.2 Contract Amendments**
Consultant agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Consultant and District.

C.3 Reserved

C.4 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.5 Background Checks for Consultant Personnel

Consultant shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide services to the District; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by the District and not in violation of applicable law, Consultant shall conduct a background check, at Consultant's sole expense, on all its personnel providing services. If requested by the District, Contractor shall provide the results of the background check of each individual to verify that the individual meets Consultant's standards for employment. Such background check shall be in the form generally used by Consultant in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Consultant personnel who do not meet the District's hiring criteria, in District's sole discretion, shall not be assigned to work on District property or services, and District shall have the right, at its sole option, to refuse access to any of Consultant's personnel to any District facility.

C.6 Change of Address

Consultant shall notify the District in writing, of any change in mailing address within ten (10) business days of the change.

C.7 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.8 Compliance with County Policy

In performing the services and while at any District facilities, Consultant personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the District regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the District; and (d) abide by all laws applicable to the District facilities and the provision of the services, and all amendments and modifications to each of the items addressed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Consultant or Consultant personnel or may be made available to Consultant or Consultant personnel by conspicuous posting at a District facility, electronic posting, or other means generally used by District to disseminate such information to its employees or contractors. Consultant shall be responsible for the promulgation and distribution of County Policies to Consultant personnel to the extent necessary and appropriate.

District shall have the right to require Consultant's employees, agents, representatives and subcontractors to exhibit identification credentials issued by District in order to exercise any right of access under this Contract.

C.9 Confidentiality

Consultant shall protect from unauthorized use or disclosure the names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. Consultant shall not use or disclose any identifying

information for any purpose other than carrying out the Consultant's obligations under this Contract, except as may otherwise be required by law. This provision will remain in force even after the termination of the Contract.

C.10 Primary Point of Contact

Consultant will designate an individual to serve as the primary point of contact for the Contract. Consultant or designee must respond to District inquiries within two (2) business days. Consultant shall not change the primary contact without written acknowledgement to the District. Consultant will also designate a back-up point of contact in the event the primary contact is not available.

C.11 District Representative

The Director of the Department of Public Works – Special Districts or his/her designee shall represent the District in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the services/Scope of Work by Consultant. If this Contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract, unless otherwise delegated.

C.12 Damage to District Property

Consultant shall repair, or cause to be repaired, at its own cost, all damages to District vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Consultant or its employees or agents. Such repairs shall be made immediately after Consultant becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Consultant fails to make timely repairs, the District may make any necessary repairs. The Consultant, as determined by the District, shall repay all costs incurred by the District for such repairs, by cash payment upon demand, or District may deduct such costs from any amounts due to the Consultant from the District, as determined at the District's sole discretion.

C. 13 Debarment and Suspension

Consultant certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Consultant further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.14 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this Contract, the Consultant agrees that the Consultant and the Consultant's employees, while performing service for the District, on District property, or while using District equipment:

C.14.1 Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

C.14.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

C.14.3 Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Consultant or Consultant's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Consultant shall inform all employees that are performing service for the District on District property, or using District equipment, of the District's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the District.

The District may terminate for default or breach of this Contract and any other Contract the Consultant has with the District, if the Consultant or Consultant's employees are determined by the District not to be in compliance with above.

C.15 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.16 Employment Discrimination

During the term of the Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Consultant shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.17 Environmental Requirements

In accordance with County Policy 11-08, the District prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The District requires Consultant to use recycled paper for any printed or photocopied material created as a result of this Contract. Consultant is also required to use both sides of paper sheets for reports submitted to the District whenever practicable.

To assist the District in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Consultant must be able to annually report the District's environmentally preferable purchases. Consultant must also be able to report on environmentally preferable goods and materials used in the provision of their service to the District, utilizing a District approved form.

C.18 Improper Influence

Consultant shall make all reasonable efforts to ensure that no District officer or employee, whose position in the District enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Consultant or officer or employee of the Consultant.

C.19 Improper Consideration

Consultant shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the District in an attempt to secure favorable treatment regarding this Contract.

The District, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the District with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Consultant shall immediately report any attempt by a District officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Consultant. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the District is entitled to pursue any available legal remedies.

C.20 Informal Dispute Resolution

In the event the District determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.21 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.22 Licenses, Permits and/or Certifications

Consultant shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The Consultant shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Consultant will notify District immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

Consultant must have a valid business license and maintain it throughout the Project's duration.

C.23 Material Misstatement/Misrepresentation

If, during the course of the administration of this Contract, the District determines that Consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the District, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the District is entitled to pursue any available legal remedies.

C.24 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

C.25 Nondisclosure

Consultant shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the District to Consultant or an agent of Consultant or otherwise made available to Consultant or Consultant's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Consultant or an agent of Consultant in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.26 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

C.27 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Consultant pursuant to the Contract shall be considered property of the District upon payment for services (and products, if applicable). All such items shall be delivered to District at the completion of work under the Contract, subject to the requirements of Article D–Term of the Contract. Unless otherwise directed by District, Consultant may retain copies of such items.

C.28 Participation Clause

The District desires that Municipalities, School Districts, and other Tax Districts within the San Bernardino County requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Consultant agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

C.28.1 Such governmental body does not have and will not have in force any other contract for like purchases.

C.28.2 Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Consultant. The District will not be liable for any such purchase made between the Consultant and another governmental body who avails themselves of this contract.

C.29 Air, Water Pollution Control, Safety and Health

Consultant shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.30 Records

Consultant shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Consultant’s personnel, consultants, subcontractors, services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

C.31 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Consultant, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

Any provision of this Contract that may appear to give the District any right to direct the Consultant concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the District concerning the end results of the performance.

C.32 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Consultant's relationship with District may be made or used without prior written approval of the District.

C.33 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.34 Subcontracting

Consultant shall obtain District's written consent, which District may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to District. At District's request, Consultant shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the District, resumes of proposed subcontractor personnel. Consultant shall remain directly responsible to District for its subcontractors and shall indemnify District for the actions or omissions of its subcontractors under the terms and conditions specified in Article G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Consultant Personnel.

For any subcontractor, Consultant shall:

C.34.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

C.34.2 Ensure that the subcontractor follows District's reporting formats and procedures as specified by District.

C.34.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Articles B. Consultant Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, District will have the right to enter into direct Contracts with any of the subcontractors. Consultant agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct contracts with District.

C. 35 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided under this Contract is served upon Consultant or District, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Consultant and District further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Consultant for District.

C.36 Termination for Convenience

The District reserves the right to terminate the Contract, for its convenience, with or without cause, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Consultant for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Consultant shall promptly discontinue services unless the

notice directs otherwise. Consultant shall deliver promptly to District and transfer title (if necessary) to all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

C.37 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.38 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

C.39 Conflict of Interest

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the District. Consultant shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the District determines a conflict-of-interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the District and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Consultant's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.40 Former County Administrative Officials

Consultant agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Consultant. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Consultant. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.41 Disclosure of Criminal and Civil Procedures

District reserves the right to request the information described herein from Consultant. Failure to provide the information may result in a termination of the Contract. The District also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Consultant also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten

years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Consultant will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Consultant will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the District. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.42 Copyright

District shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Consultant as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Consultant in the United States or in any other country without the express written consent of District. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the District prior to publication.

C.43 Artwork, Proofs and Negatives

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the District. These items must be returned to the District within ten (10) days, upon written notification to the Consultant. In the event of a failure to return the documents, the District is entitled to pursue any available legal remedies. In addition, Consultant will be barred from all future solicitations, for a period of at least six (6) months.

C.44 Reserved

C.45 Reserved

C. 46 Errors, Omissions and/or Conflicts

Consultant shall be responsible for the integrity of all design and research studies prepared or approved by the Consultant and should District suffer damages due to errors, omissions, and/or conflicts within such documents, the Consultant shall be responsible to District for costs of all such damages.

C. 47 Regulatory Agencies

Except for emergencies, or except for situations where contact is required by law or relevant professional canons of ethics (in which case Consultant will use its professional efforts to notify and confer with the District before such contact, the parties recognizing that there may not be time for such in an emergency), Consultant shall not contact the Local Enforcement Agency, South Coast Air Quality Management District or other regulatory agencies concerning any site that is the subject of this Contract without District prior approval.

C. 48 California Consumer Privacy Act

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §1798.100, et seq.). For purposes of this provision, “business,” “consumer,” and “personal information” shall have the same meanings as set forth at Civil Code section 1798.140. Contractor must contact the District immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the District, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the District unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the District any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the District if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).

C. 49 Reserved

C. 50 Reserved

D. TERM OF CONTRACT

This Contract is effective as of June 18, 2025 and expires June 18, 2026 but may be terminated earlier in accordance with provisions of this Contract. The Contract term may be extended by mutual agreement of the parties.

E. DISTRICT RESPONSIBILITIES

E.1 Designate in writing a person or persons to act as representatives of the District with respect to the work to be performed under the Contract. The District Representative is listed below. The District Representative shall provide overall management and coordination of the Contract on the District’s behalf. Any notices shall be provided to the District to the District Representative in writing. The District Representative listed below will be the primary point of contact for management and coordination of services with the District.

District Representative:
Chuck Hernandez, Project Manager
Special Districts Division
222 W. Hospitality Lane, 2nd Floor
San Bernardino, CA 92415-0450
Email: charles.hernandez@sdd.sbcounty.gov

F. FISCAL PROVISIONS

F.1 The maximum amount of payment under this Contract shall not exceed \$249,400 and shall be subject to availability of other funds to the District. The consideration to be paid to Consultant, as provided herein, shall be in full payment for all Consultant’s services and expenses incurred in the performance hereof, including travel and per diem.

The District shall make an initial progress payment of \$124,700 (50% of the total contract amount) upon execution of the Contract and receipt of a proper invoice. This initial payment shall be credited against work performed and invoiced under the Contract and is expressly subject to adjustment or reimbursement in the event that services are not rendered in accordance with the scope of work. Consultant agrees that if the Contract is terminated or work is not completed, the District may recover any unearned portion of the initial progress payment.

Consultant bears the risk that it may not be able to generate its anticipated (or any) profit in completing its performance of all required items of work for the specified level of compensation. In no event shall Consultant be entitled to receive compensation for any item of work required of Consultant under the terms of the Contract, which item of work is not performed by Consultant (including Consultant's agents and approved subcontractors).

F.2 Consultant's "Cost Proposal", attached as Exhibit A, hereto, sets out the Consultant's estimate of the cost (including wages) of completing the Scope of Work. The Cost Proposal was used by the District to determine the reasonableness of the cost of Consultant's proposal and is further used in making progress payments to Consultant and in making payment to Consultant in the event of the termination of the Contract prior to the completion of all items of work. Consultant is not entitled to any additional compensation by virtue of its costs (including wages) for any item of work exceeding the cost set forth in its Cost Proposal, including excess costs related to delays in completion of the Project. Except for the initial progress payment described in Section F.1, payment shall be made on a percent of task completed and as stated on the schedule of values and to the District's satisfaction pursuant to Exhibit A.

F.3 Consultant shall provide District itemized monthly invoices, in arrears, and in a format acceptable to the District for services performed under this Contract within twenty (20) days of the end of the previous month. The District shall make payment to Consultant within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.

All invoices are to be submitted to the Project Manager for approval..

F.4 Consultant shall accept all payments from District via electronic funds transfer (EFT) directly deposited into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by District required to process EFT payments.

F.5 District is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Consultant or on any taxes levied on employee wages. The District shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the District pursuant to the Contract.

F.6 Reserved

F.7 Reserved

F.8 Consultant shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the District. In addition, Consultant is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 Indemnification

Consultant and District shall defend and indemnify the other party for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the indemnifying party or their agents or employees. This Agreement incorporates by reference the provisions of Civil Code section 2782.8, including, but not limited to, the provisions that concern the duty and cost to defend the indemnified party.

The indemnifying party agrees to indemnify, defend (with counsel reasonably approved by the indemnified party) and hold harmless the indemnifying party and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from the acts, errors or omissions of the indemnifying party, their agents or employees and for any costs or expenses incurred by the Indemnified Party on

account of any claim except where such indemnification is prohibited by law. The indemnification obligation applies to the indemnifying party's "active" as well as "passive" negligence but does not apply to the indemnified party's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. The indemnification by both Parties as the indemnifying party: (i) expires upon the completion of services and (ii) specifically excludes any use of the statues for any purpose for which is intended which is artistic, non-interactive, non-structural, and not intended for climbing, sitting, hanging or other contact with people for operations or maintenance. ("Unintended Uses"), and Consultant shall be the indemnified party for any such Unintended Uses.

G.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the District and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the District to vicarious liability but shall allow coverage for the District to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

G.3 Waiver of Subrogation Rights

Consultant shall require the carriers of required coverages to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Consultant and Consultant's employees or agents from waiving the right of subrogation prior to a loss or claim. Consultant hereby waives all rights of subrogation against the District.

G.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the District.

G.5 Severability of Interests

Consultant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between Consultant and District or between County and any other insured or additional insured under the policy.

G.6 Proof of Coverage

Consultant shall furnish Certificates of Insurance to the District Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.9 Failure to Procure Coverage

In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, District has the right but not the obligation or duty to cancel this Contract or obtain insurance if it deems necessary and any premiums paid by District will be promptly reimbursed by Consultant or District payments to the Consultant will be reduced to pay for District purchased insurance.

G.10 Insurance Review

Insurance requirements are subject to periodic review by District. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of District. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against District, inflation, or any other item reasonably related to the District's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Consultant agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of District to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of District.

G.11 Consultant agrees to provide insurance set forth in accordance with the requirements herein. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Consultant agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, Consultant shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

G.11.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Consultant and all risks to such persons under this contract.

If Consultant has no employees, it may certify or warrant to the District that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Consultants that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

G.11.2 Commercial/General Liability Insurance – Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of Consultant providing coverage for bodily injury and property damage with a combined single limit of not less

than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

G.11.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Consultant is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

G.11.4 Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

G.11.5 Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of District.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

G.11.6 Reserved

G.11.7 Reserved

G.11.8 Reserved

H. SUCCESSORS AND ASSIGNS

H.1 This Contract shall be binding upon District and Consultant and their respective successors and assigns.

H.2 Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Consultant without the prior written consent and approval of District.

H.3 Death or Incapacity: If the Consultant transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and District shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by District by reason of such termination. If there be more than one Consultant and any one of them die or become incapacitated and the others continue to render the services covered herein, District will make payment to those continuing as though there had been no such death or incapacity and District will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Consultant herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Consultant.

I. RIGHT TO MONITOR AND AUDIT

I.1 The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Consultant in the delivery of services provided under this Contract. Consultant shall give full cooperation, in any auditing or monitoring conducted. Consultant shall cooperate with the District in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the District.

I.2 All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by District representatives for a period of three years after final payment under the Contract or until all pending County, State and Federal audits are completed, whichever is later.

J. CORRECTION OF PERFORMANCE DEFICIENCIES

J.1 Failure by Consultant to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

J.2 In the event of a non-cured breach, District may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Consultant thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of District; and/or
- b. Discontinue reimbursement to Consultant for and during the period in which Consultant is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or
- d. Offset against any monies billed by Consultant but yet unpaid by District those monies disallowed pursuant to Item "b" of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Consultant. In the event of such termination, District may proceed with the work in any manner deemed proper by District. The cost to District shall be deducted from any sum due to Consultant under this Contract and the balance, if any, shall be paid by Consultant upon demand.

J.3 Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and

every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

K. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

Department of Public Works – Special Districts
222 West Hospitality Lane, Second Floor
San Bernardino, CA 92415-0450

Garner Holt Productions, Inc.
1255 Research Drive
Redlands, CA 92374

Notice shall be deemed communicated two (2) District working days from the time of mailing if mailed as provided in this paragraph.

L. ENTIRE AGREEMENT

This Contract, including all Attachment, Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

M. ELECTRONIC SIGNATURES

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the District has caused this Contract to be subscribed by its duly authorized officers, in its behalf, and the said party of the second part has signed this Contract..

BLOOMINGTON RECREATION & PARK DISTRICT

► *Dawn Rowe*
Dawn Rowe, Chair, Board of Directors

Dated: JUN 18 2025

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Lyrina Monell*
Lyrina Monell, Secretary
Deputy



GARNER HOLT PRODUCTIONS, INC.

(Print or type name of corporation, company, contractor, etc.)

By *Bill Butler*
(Authorized signature - sign in blue ink)

Name *Bill Butler*
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: 06/13/25

Address _____

Approved as to Legal Form
► *Aaron Gest*
Aaron Gest, Deputy County Counsel
Date 06/13/25

Reviewed for Contract Compliance
► _____
Noel Mondragon, Division Manager
Date _____

Reviewed/Approved by Department
► *David Doublet*
David Doublet, Assistant Director
Date 06/13/25

EXHIBIT A

COST PROPOSAL

ATTACHMENT E – COST/FEE PROPOSAL SHEET(S)

ITEMIZED BID SCHEDULE:						
ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL EXTENSION	PLAN SET SHEET No.
1	3D IMAGE SCAN OF MODELS AND FABRICATION	1	LS	\$120,000.00	\$120,000.00	N/A
2	PLACEMENT AND SECURING/ANCHORING OF PLANTER, TWO (2) ORIGINAL STATUES, INCLUDING FOOTINGS	1	LS	\$115,000.00	\$115,000.00	N/A
3	OPTIONAL TASK – PLACEMENT AND SECURING OF OWNER SUPPLIED SYNTHETIC TURF	1	LS	\$14,400.00	\$14,400.00	N/A
	TOTAL BID AMOUNT				\$249,400.00	